STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GLENDORA TEACHERS ASSOCIATION,	)	
	)	
Charging Party,	)	Case No. LA-CE-3052
	)	
v.	)	PERB Decision No. 876
	)	
GLENDORA UNIFIED SCHOOL DISTRICT,	)	May 16, 1991
	)	
Respondent.	)	
	)	

Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for the Glendora Teachers Association; Parker, Covert & Chidester by Michael L. Owens, Attorney, for Glendora Unified School District.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Glendora Teachers Association (GTA) of a Board agent's dismissal (attached) of its unfair practice charge. In its charge, the GTA alleged that the Glendora Unified School District (District) violated sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act)[1] by unilaterally changing

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

certain terms and conditions of the collective bargaining agreement. Specifically, GTA alleged that in granting a counselor and unit member, Myra Boone (Boone), release time to work a portion of her normal workday for another employer on several occasions, the District unilaterally modified the salary provision of the contract and other terms and conditions of employment. The Board agent, after reviewing the original, first amended and second amended charges, dismissed the allegations for failure to state a prima facie case.

For the reasons stated below, the Board affirms the dismissal.

The Charge

GTA alleged that the District permitted Boone to work for another employer on several occasions during hours that she was ordinarily required to work for the District. This action allegedly constituted a change in the District's prior practice of denying employees release time to earn additional income. GTA further alleged the change in policy "is not within the scope of, nor permitted by, Articles 4.2, 4.3 and 4.5" of the collective bargaining agreement.[2] In particular, GTA alleges the type of

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> guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[2]Article 4.2 provides:

temporary absence contemplated by Articles 4.2 and 4.3 was not the type of absence granted by the District in this case. GTA characterized the temporary release of Boone as an "absence for substantial periods of time on several days for the purpose of earning additional money during the regular day."

GTA also alleged that Article 4.5 "does not by its terms, or the intent of the parties, contemplate agreements to permit 'double-dipping' or the earning of two incomes for work to be performed during the same period of time." GTA contends that the "true meaning" of Articles 4.2 and 4.3 must be interpreted in light of the criteria set forth in Article 4.5 which provides

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> Non-teaching [sic] employees will regularly be on campus no less than seven (7) hours and twenty (20) minutes not including a duty-free forty (40) minute lunch period.

Article 4.3 provides:

> Any temporary exception reducing hours in Sections 4.1 and 4.2 shall be approved in advance by the site administrator.

Article 4.5 provides:

> The normal workday schedule(s) (which will establish the beginning and ending time of the workday) shall be set mutually by the site administrator and the individual staff member. In the event that mutual agreement cannot be reached, the site Administrator's decision shall be final except that such decision shall be consistent with the other provisions of this article and shall be based on the educational needs of the school and the professional need for teachers to be available to students, parents, and administrators.

that the decision to grant temporary exceptions must be "based on the educational needs of the school and the professional need for teachers to be available to students, parents and administrators." GTA argues that allowing outside work for "outside compensation" fails to meet the criteria established by Article 4.5. Finally, GTA alleged that the District's new policy bestows a significant benefit concerning compensation and hours to employees selected by the District without affording the Association notice or opportunity to meet and negotiate the change.

Board Agent's Dismissal

The Board agent dismissed the charge concluding that Article 4.5 on its face addresses the "normal workday schedule" of staff members and does not address the approval of temporary exceptions to that norm. In contrast, Article 4.3, by its terms, deals directly and exclusively with the approval of exceptions. Referring to the specific language of the contract, the Board agent noted that Article 4.3 states, "any temporary exception reducing [regular on-campus] hours in sections 4.1 and 4.2 shall be approved in advance by the site administrator." The Board agent also noted that Boone's normal workday was 7:30 a.m. to 3:30 p.m. but that the District granted permission for her to be absent during a portion of these hours on four separate occasions.[3] He concluded that these temporary reductions in

[3]According to the Board agent, Boone was permitted to be off campus to conduct workshops for the Los Angeles County Department of Education until 11:00 a.m. on September 6 and October 15,

regular on-campus hours were clearly authorized by the plain language of Article 4.3.

The Board agent also concluded that the allegations failed to establish the alleged change had a generalized effect or continuing impact on the terms and conditions of employment of bargaining unit members under Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant). Further, rejecting GTA's contention that the District changed its practice of denying requests for release time, the Board agent, citing Marysville Joint Unified School District (1983) PERB Decision No. 314 (Marysville), stated that the mere fact an employer has not chosen to enforce its contractual rights in the past does not mean, ipso facto, it is forever precluded from doing so. Accordingly, the charge was dismissed.

GTA's Appeal

GTA contends on appeal that the Board agent decided factual issues in dispute and, therefore, exceeded his authority in investigating the charge. Citing Eastside Union School District (1984) PERB Decision No. 466, GTA notes that Board agents are not empowered to "rule on the ultimate merits of a charge." GTA further contends that the factual allegations in an unfair practice charge are to be considered true for the purposes of assessing the prima facie case and that the Board agent refused to accept the allegations as true in this case. Thus, according

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1990, and was permitted to leave campus at 2:15 p.m. on September 26, 1990, and at 2:30 p.m. on December 7, 1990.

to GTA, the Board agent exceeded his authority by deciding contested factual issues during the investigation of the charge. (Los Angeles Unified School District (Wightman) (1984) PERB Decision No. 473.)

Next, GTA argues that the contract language relied upon by the District forms the basis of the District's action. Therefore, the District's conduct in interpreting the contract to grant temporary releases is a decision of general application covering all members of the bargaining unit, and thus constitutes a unilateral change in violation of the Act.

GTA further contends that the Board agent's reliance on the contract language as authorizing the District's action is misplaced. According to GTA, Article 4.5 only permits temporary exceptions "based on the educational needs of the school and the professional need for teachers to be available to students, parents and administrators." GTA argues that in placing this language in the contract "the parties were contemplating employment serving the 'educational needs of the school' not outside employment for the financial gain of the individual." Thus, the Board agent's conclusion that the District's actions "were clearly authorized by the plain language of 4.3" is in error.[4]

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[4]GTA also argues under this exception that the Association should, at a minimum, be permitted to put on evidence and to examine District witnesses regarding the meaning of the contract language, bargaining history, and past practice concerning these issues. This argument is without merit. Referring to its decision in Marysville, the Board, in Saddleback Community College District (1984) PERB Decision No. 433, pp. 4-5, stated:

Finally, GTA contends that the Board agent's reliance on Marysville is misplaced since its application depends upon the "assumption that the contract language permits the District's action." GTA concludes the Board agent is not authorized to determine whether these actions are permitted by the contract, as such a determination would resolve facts in dispute.

DISCUSSION

GTA's contention that the Board agent exceeded his authority and decided the factual issues in dispute is without merit. Also without merit is GTA's contention that sufficient facts have been alleged to establish that the District's interpretation of the contract amounts to a change of policy.

Under EERA section 3541.5(b) the Board has no authority to enforce agreements between parties and cannot issue a complaint on any charge based on an alleged violation of an agreement unless the violation would also constitute an unfair practice under EERA. (Grant.)

> Although we do not suggest that a hearing will always be required where the dispute involves an existing contract, Marysville also informs us that where there is a legitimate dispute over the meaning of that contract, the parties must be afforded the opportunity to offer evidence in support of their respective contentions. (Emphasis in original.)

For the reasons identified in this decision, GTA has failed to allege facts that would establish a "legitimate dispute over the meaning" of the contract. Therefore, a hearing is not warranted.

To state a prima facie case of a unilateral change the charging party must allege facts sufficient to establish: (1) the employer breached or altered the party's written agreement or own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy (i.e., has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (Grant: Pajaro Valley Unified School District (1978) PERB Decision No. 51; Davis Unified School District, et al. (1980) PERB Decision No. 116.)

From the contents of the charge, the central issue in dispute is the meaning of Article 4.5 and its application to Articles 4.2 and 4.3. GTA alleges that the criteria identified in Article 4.5 was "intended" or "contemplated" by the parties to restrict temporary absences granted under Article 4.3. GTA also states the "new policy [of granting temporary releases of the type occurring in this case] is not within the scope of, nor permitted by, the language of the collective bargaining agreement."

GTA's charge, however, is devoid of any factual allegations identifying evidence to support such an interpretation. Accordingly, without such allegations the Board agent is not required to accept the charging party's conclusory allegations

regarding the interpretation of the contract. (See e.g., Los Angeles Unified School District (Wightman), supra. PERB Decision No. 473, pp. 7-9.) Rather, the Board agent is free to examine the contract and, by reference to its terms only, determine its meaning. (See Butte Community College District (1985) PERB Decision No. 555 where the Board, in addressing a similar type of contract interpretation issue, relied on Civil Code section 1644 for the proposition that the words of a contract are to be understood in their ordinary and popular sense, unless the parties intended a special meaning by their usage.) In this case, the contract language is clear. Article 4.2 provides:

> Non-teaching [sic] employees will regularly be on campus no less than seven (7) hours and twenty (20) minutes not including a duty-free forty (40) minute lunch period.

Article 4.3 provides:

> Any temporary exception reducing hours in Sections 4.1 and 4.2 shall be approved in advance by the site administrator.

Article 4.5 provides:

> The normal workday schedule(s) (which will establish the beginning and ending time of the workday) shall be set mutually by the site administrator and the individual staff member. In the event that mutual agreement cannot be reached, the site Administrator's decision shall be final except that such decision shall be consistent with the other provisions of this article and shall be based on the educational needs of the school and the professional need for teachers to be available to students, parents, and administrators.

Without factual allegations identifying evidence to support a contrary interpretation, the plain and ordinary meaning of the language used in these Articles clearly indicates that the District's conduct in granting the temporary absences to Boone is permitted under the contract.

Furthermore, where the contract language is clear and unambiguous on its face it is unnecessary to go beyond the language of the contract itself to ascertain its meaning. (Butte Community College District, supra, PERB Decision No. 555, pp. 10-11; Marysville.) Here, GTA merely asserts its interpretation as to the "true [or intended] meaning" of the language contained in Article 4.5. Specifically, GTA argues that the decision to grant temporary exceptions under Article 4.3 must be "based on the educational needs of the school and the professional need for teachers to be available to students, parents and administrators." Thus, the Board agent did not exceed his authority nor decide the ultimate factual issue when he rejected GTA's unsupported and conclusory allegation concerning the interpretation of the contract.

GTA also fails to establish, as one of its prima facie elements of a unilateral change violation, that the District's decision to grant a temporary release for Boone constituted a change in policy. The Board has previously stated that an employer's established policy may be embodied in the terms of the collective bargaining agreement itself. (Grant.) However, where the contract is silent or ambiguous as to such a policy, that

policy must be ascertained by examining past practice or bargaining history. (Marysville? Rio Hondo Community College District (1982) PERB Decision No. 279; Pajaro Valley Unified School District, supra. PERB Decision No. 51.) In the instant case, the clear and unambiguous language of the contract establishes that it is the policy of the District to grant temporary absences for nonteaching employees provided the employee obtain prior approval from the site administrator. Accordingly, it is unnecessary to go beyond that language to ascertain a contrary interpretation in the absence of supporting factual allegations. (Marysville, p. 10; see also Butte Community College District, supra. PERB Decision No. 555.)

We note further that a unilateral change in established policy, whether embodied in the contract or evident from the parties' past practice, cannot be established unless the allegations identify facts evidencing a conscious or apparent reversal of a previous understanding. (Grant.) GTA has alleged no facts to support its interpretation of the intended meaning of the contract language in question. Consequently, it cannot be established by the allegations that a reversal or departure from a prior understanding of the parties, which in this case is embodied in the contract, has occurred.

Finally, we reject GTA's allegation that the Board agent exceeded his authority in relying on Marysville. Although it is true the meaning of Article 4.5 is the fundamental issue in dispute, GTA has stated only conclusionary allegations as to the

"true" or "contemplated" meaning of the Article. Thus, as a part of his determination as to whether a prima facie case has been stated, the Board agent was free to examine whether the contract language on its face expressly permits the District's conduct. Having found that it does, the Board agent properly cited PERB case law directly on point for the proposition that a failure to previously exercise a right expressly authorized by the contract, does not preclude the District from exercising that right at the present time.

ORDER

For the reasons stated above, the Board DENIES GTA's appeal and AFFIRMS the Board agent's dismissal in Case No. LA-CE-3052 WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles. CA 90010-2334
(213) 736-3127

February 21, 1991

Charles R. Gustafson
California Teachers Association
P.O. Box 92888
Los Angeles, CA 90009

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-3052, Glendora Teachers Association v. Glendora Unified School District

Dear Mr. Gustafson:

I indicated to you in my attached letter dated February 8, 1991, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to February 19, 1991, the charge would be dismissed.

On February 19, 1991, I received from you a Second Amended Charge. This amended charge includes the following significant addition to the allegations:

> The true meaning of the provisions in question [Articles 4.2, 4.3 and 4.5 of the collective bargaining agreement] are [sic] highlighted by the criteria set forth in Article 4.5 that the decision on temporary exceptions must be "based on the educational needs of the school and the professional need for teachers to be available to students, parents and administrators." The allowance of outside work for outside compensation does nothing to meet the educational needs of Glendora Unified School District or the professional need of being available to the students, parents or administrators of Glendora Unified School District.

The amended charge still does not state a prima facie violation of the EERA, for the reasons that follows.

Article 4.5 of the collective bargaining agreement provides in relevant part as follows:

> The normal workday schedule(s) (which will establish the beginning and ending time of the workday) shall be set

> mutually by the site administrator and the individual staff member. In the event that mutual agreement cannot be reached, the site Administrator's decision shall be final except that such decision shall be consistent with the other provisions of this article and shall be based on the educational needs of the school and the professional need for teachers to be available to students, parents, and administrators.

On its face, this Article deals with the setting of the "normal workday schedule." It does not deal with the approval of exceptions to that norm. In contrast, Article 4.3 deals directly and exclusively with the approval of exceptions, and the limitations of Article 4.5 do not apply. As discussed in my February 8 letter, the only limitations on the approval of exceptions under Article 4.3 are (1) that the exceptions must be temporary and (2) that they must reduce regular on-campus hours.

The temporary reductions in regular on-campus hours approved by the District were clearly authorized by the plain language of Article 4.3. I am therefore dismissing the charge based on the facts and reasons contained in this letter and in my February 8 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Code of Regulations, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regulations, title 8, section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Code of Regulations, title 8, section 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (California Code of Regulations, title 8, section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

JOHN W. SPITTLER
General Counsel

By .
Thomas J. Allen
Regional Attorney

Attachment

cc: Spencer E. Covert

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles. CA 90010-2334
(213) 736-3127

February 8, 1991

Charles R. Gustafson
California Teachers Association
P.O. Box 92888
Los Angeles, CA 90009-2888

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3052, Glendora Teachers Association v. Glendora Unified School District

Dear Mr. Gustafson:

In the above-referenced charge, the Glendora Teachers Association (Association) alleges that the Glendora Unified School District (District) unilaterally changed a policy concerning the normal duty day. This conduct is alleged to violate Government Code sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).

My investigation of the charge revealed the following facts.

The Association is the exclusive representative of a unit of the District's certificated employees. The collective bargaining agreement between the Association and the District, effective September 14, 1988, through June 30, 1991, provides in relevant part as follows, in Article IV ("Hours):

> **4.1 The Bargaining Unit Members will be on campus no less than six (6) hours and twenty (20) minutes each** contract day unless **other** provisions have been made.
>
> **4.2 Non-teaching** employees will regularly **be on campus no less than** seven (7) hours **and twenty (20) minutes** not including a **duty-free forty (40) minute** lunch period.
>
> **4.3 Any temporary** exception reducing hours in Sections 4.1 and 4.2 shall **be approved in advance by** the **site** administrator.

The **charge alleges that** the District had a "prior practice **of denying unit members** release from regular duties in order to earn additional compensation," but that around the beginning of the 1990-91 school year the District permitted "a unit member to work for another employer and receive salary from that other employer

for work performed during the normal duty day of unit members in the District." The charge itself does not identify the unit member in question or provide any other factual detail. Attached to the First Amended Charge as Exhibit A, however, is the District's letter of response to the original charge. This letter assumes that the unit member in question is Counselor Myra Boone, whose normal duty day was 7:30 a.m. to 3:30 p.m. but who was permitted to be off campus until 11:00 a.m. on September 6 and October 15, 1990, and to leave campus at 2:15 p.m. on September 26, 1990, and at 2:30 p.m. on December 7, 1990, in order to conduct workshops for the Los Angeles County Department of Education.

The charge asserts that the District's letter of response "admits that its new policy is one of general application," but the letter contains no such admission. The charge also asserts that the District changed the "salary" of unit members, but there is no allegation or evidence that the District changed the salary that it paid to any unit member.

Based on the facts stated above, the charge fails to state a prima facie violation of the EERA, for the reasons that follow.

A unilateral change of policy that violates the EERA is one that "has, by definition, a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members." Grant Joint Union High School District (1982) PERB Decision No. 196, at p.9. The present charge does not allege facts which indicate that the District's action with regard to one unit member was a change of policy with such a generalized impact or continuing effect.

Further, the District's action appears to be fully consistent with the policy established by the plain language of the collective bargaining agreement. Section 4.3 of Article IV of the agreement specifically states, "Any temporary exception reducing [regular on-campus] hours in Sections 4.1 and 4.2 shall be approved in advance by the site administrator." Plainly, what the agreement says the District (through its site administrator) "shall" do (approve exceptions to regular on-campus hours) the District is contractually permitted to do.

The charge asserts that Section 4.3 contemplated only "the type of temporary absence to carry out District duties elsewhere." This assertion, however, is not supported by the plain language of the section. That language sets only two limitations on exceptions to be approved by the District: (1) that they be temporary (rather than permanent) and (2) that they reduce (rather than increase) regular on-campus hours. The exceptions

approved in the present case clearly reduced rather than increased the unit member's regular on-campus hours, and there is no allegation or evidence that the exceptions were permanent rather than temporary. (Four days spread out over a four-month period cannot be regarded as permanent exceptions.) The District was thus within its plainly established contractual rights when it approved those exceptions.

The fact that the District allegedly had a prior practice of denying exceptions does not make its approval of the exceptions an unlawful unilateral change. As PERB stated in Marysville Joint Unified School District (1983) PERB Decision No. 314, at p.10, "The mere fact that an employer has not chosen to enforce its contractual rights in the past does not mean that, ipso factor, it is forever precluded from doing so."

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before February 19, 1991, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney